(1)

Supreme Court, U.S.
FILED

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No. 99-

IN THE

Supreme Court of the United States

MRS. CAROLYN S. SMITH,

Petitioner,

v.

DR. CHARLES H. FAUCHEUX, ST. ANNE HOSPITAL AND HEALTH CENTERS and STATE OF LOUISIANA MEDICAL REVIEW PANEL, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

CAROLYN S. SMITH
Petitioner, Pro Se
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31 pp

QUESTIONS PRESENTED

I.

WHETHER *Pennoyer v. Neff*, requires that no person shall be deprived of Life, Liberty, Property or of any rights granted him by statute, unless the matter involved "first" shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings, and does it forbid condemnation without a hearing?

II.

WHETHER the United States Courts misconstrued the Due Process requirements of the Fifth and Fourteenth Amendments articulated in *Pennoyer v. Neff*?

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OPINIONS BELOW

The unpublished written opinion of the United States Court of Appeals for the Fifth Circuit appears at Appendix A to this petition. The Order and Reasons of the United States District Court for the Eastern District of Louisiana is also an unpublished opinion and can be found at Appendix B. The per curiam opinion of the United States Court of Appeals for the Fifth Circuit denying the petition for rehearing appears at Appendix D.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fifth Circuit issued its per curiam opinion on August 31, 1999 (App. A). Petitioner's timely motion for a rehearing was denied on September 30, 1999 (App. D). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Article III, section 2, of the United States Constitution:

> Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under the Constitution, the Laws of the United States, and Treaties made or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; to Controversies between two or more States; — between a state and Citizens of another State; — between Citizens of different States; —

between Citizens of the same State claiming Lands under the Grants of different States, and between a State, or the citizens thereof, and foreign States, Citizens or Subjects. (2) In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the Supreme Court shall have Original Jurisdiction. In all the other Cases before mentioned the Supreme Court shall have appellate Jurisdiction both as to Law and Fact, with such exceptions, and under such Regulations as the Congress shall make.

Article IV, of the United States Constitution:

Section 1. Full Faith and Credit shall be given in State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof. . . .

Section 3. (2) The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Article VI, of the United States Constitution:

> (2) This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary not withstanding. . . .

STATEMENT OF THE CASE

The United States District Court for the Eastern District of Louisiana, had jurisdiction pursuant to 28 U.S.C.A. § 1331; 28 U.S.C.A. § 547, but lacked subject matter jurisdiction pursuant to Article III, section 2, clause 2; 28 U.S.C.A. § 1251 and the Eleventh Amendment to the Constitution of the United States. (28 U.S.C.A. §§ 451 and 2403(a)(b)(c); 18 U.S.C.A. § 3006A).

Petitioner filed a fraud, malpractice, and negligence per se suit on February 20, 1998, in the United States District Court for the Eastern District of Louisiana, Civil and Criminal Action No. 98-0558, charging the respondents with fraud in violation of 18 U.S.C. § 1001, *et seq*. by committing the crime of making false statement concerning denial of constitutional rights, in fraudulent statement to deny and deprive petitioner of rights granted by the State and United States Constitution, and statutes; in violation of Article I, section 10, in intentionally refusing or failing to perform all duty lawfully required of them, as such officers and employers, and performed such duty in an unlawful manner; 42 U.S.C.A. §§ 1983, 1985, 1986, and 1988.

On February 20, 1998, petitioner filed a complaint, under civil and criminal statutes, Title 18 U.S.C.A. § 1001, *et seq.*; Article I, section 10, United States Constitution, Article VI, United States Constitution, in the United States District Court for the Eastern District of Louisiana.

On March 16, 1998, Judge Sarah S. Vance ordered that petitioner respond to questions and setting forth the basis for the Court's jurisdiction.

On March 20, 1998, St. Anne General Hospital was added as a party, and St. Anne Hospital Health was terminated.

On March 20, 1998, respondent St. Anne General Hospital filed a motion to dismiss for lack of subject matter jurisdiction and alternative motion for a more definite statement.

On March 25, 1998, petitioner filed answers to interrogatories of orders, setting forth the basis for the court's jurisdiction and a more definate statement.

On April 14, 1998 the case was reassigned to Judge Ivan L. Lemelle by Judge Sarah S. Vance.

On May 22, 1998, notice was filed that the case was reallotted to Magistrate Judge 2 by the Clerk of the Court.

On November 13, 1998 notice/order issued that the case is set before Judge Ivan L.R. Lemelle.

On December 14, 1998 call docket was set at 9:00, 12/2/98, ordered continued to be reset after ruling on respondents' motion to dismiss, by Judge Ivan L.R. Lemelle.

On December 14, 1998, petitioner filed a notice for constitutional questions in accordance with local rule 10.3 and 28 U.S.C.A. § 2403, certification to the United States Attorney General on the basis that the constitutionality of an Act of Congress was drawn into question.

On January 22, 1999, Order and Reasons issued granting motion of St. Anne General to dismiss for lack of subject matter jurisdiction and further ordered that respondents' motion to certain terms and for a more definite statement were dismissed as moot in view of the Court's ruling on motion to dismiss petitioner's claims as to all respondents.

On January 22, 1999 Judgment was rendered in favor of respondent Dr. Charles H. Faucheaux, St. Anne General Hospital and State of Louisiana Medical Review Panel and against petitioner, dismissing petitioner's claims with prejudice by Judge Ivan L. Lemelle. The due process was enhanced pursuant to 18 U.S.C.A. § 1501, *et seq.* The notice of appeal was filed on January 28, 1999.

On May 4, 1999, petitioner filed the briefs and record excerpts in the United States Court of Appeals for the Fifth Circuit.

On August 31, 1999 the Fifth Circuit issued its opinion denying petitioner appeal.

On September 9, 1999, petitioner filed a petition for rehearing in the Fifth Circuit Court of Appeals.

On September 30, 1999, the court order was entered denying petitioner's petition for rehearing. This petition for writ of certiorari ensues.

REASONS FOR GRANTING THE WRIT

I.

PENNOYER v. NEFF REQUIRES THAT NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY, PROPERTY OR OF ANY RIGHTS GRANTED HIM/HER BY STATUTE, UNLESS THE MATTER INVOLVED "FIRST" SHALL HAVE BEEN ADJUDICATED AGAINST HIM/HER UPON TRIAL CONDUCTED ACCORDING TO ESTABLISHED RULES REGULATING JUDICIAL PROCEEDING, AND IT FORBIDS CONDEMNATION WITHOUT A HEARING.

In *Smith v. Faucheux, et al.*, the United States District Court for the Eastern District of Louisiana denied petitioner's due process rights by misconstruing *Pennoyer v. Neff*, 95 U.S. 773. When all the excess verbiage is stripped away, the United States District Court denied the due process in *Smith v. Faucheux, et al.* The court stated that based on the analysis,

> the court finds that plaintiffs claims have no plausible foundation according to the statutes and federal law cited by plaintiff in her complaint and answer to interrogatories. IT IS FURTHER ORDERED that Defendant's Motion to Strike Certain Terms and Motion for a More Definite Statement (Rec. Doc. No. 4) are dismissed as MOOT in view of the Court's ruling on the above Motion to dismiss. Accordingly, plaintiffs claims as to all defendants are dismissed.

Respondents were accused of fraud, in violation of 18 U.S.C.A. § 1001; malpractice, and negligence per se under the Constitution and laws of the United States of America, including Articles IV and VI; and Acts of Congress as well as any and all other applicable laws.

Thus, it appears in the other cases that evidence of respondents conduct of previous crimes would be admissible; Seventeenth Judicial Court LA., Case No. 71972.

Therefore, a court is without authority to adjudicate a matter over which it has no jurisdiction, *Noble v. Union River Logging Railroad Co.*, 147 U.S. 165, 13 S. Ct. 271. The State is a party, under Article III, section 2, cl. 2.

Accordingly, the parties have been properly served with process, and the parties have been denied the right to a preliminary or full hearing and a trial by jury. *Morgan v. United States*, 304 U.S. 1, 58 S. Ct. 773, 776, 777.

Thus, under the Fifth Amendment, the petitioner would be able to proceed under 28 U.S.C.A. §§ 547, 2403, and 18 U.S.C. § 3006A of the Criminal Justice Act; substitution, citing, *United States v. Grismore C.A. Colo.*, 546 F.2d 844, 847, Sixth and Fourteenth Amendments under equal protection.

The only rational explanation for the courts decision which did not rely exclusively on the Fifth and Fourteenth Amendments to the United States Constitution, is that the United States District Court for the Eastern District of Louisiana has interpreted and adopted a single view of the due process of law.

Such an approach does not require a party to be heard by testimony or otherwise have the right of controverting the other parties evidence by proof. Such a view has been steadfastly rejected by the District Court.

Finally, the ill sought to be avoided by a preliminary hearing was to protect the parties from the burden of multiple trials. (Fifth Amendment).

In *Smith*, however the courts reversed petitioner's civil rights, by denying her the right to a preliminary or full hearing under the Fifth and Fourteenth Amendments.

Thus, the supposed ill that the Fifth and Fourteenth Amendments was meant to correct is not present in this case.

II.

THE UNITED STATES COURTS MISCONSTRUED THE DUE PROCESS OF THE FIFTH AND FOURTEENTH AMENDMENTS IN *PENNOYER v. NEFF.*

The court decision in *Smith v. Faucheux, et al.*, signifies a radical departure from the court in interpreting the due process of the Fifth and Fourteenth amendments to the United States Constitution. Petitioner submits that the decision of Fifth and Fourteenth Amendments is supported by precedent and workable in practice and should not be overruled.

The due process provision of the Fourteenth Amendment states:

> Section 1. . . . . Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The basic test for determining the due process of a person is important since it requires that the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of fact of liability be conclusively presumed against her, this is not due process of law.

The basic test for determining whether a person charged with a crime should be held for trial is a preliminary hearing to establish evidence that the respondent committed it. (Fed. R. Crim. P. 5.1, Fed. R. Civil P. 12(d), the proofs are the complaint, information, affidavit, and certification 2403).

The Court decision in determining the due process of law of petitioner involves conduct that violates distinct statutory provisions, 42 U.S.C.A. §§ 1983, 1985, 1986, 1987, 1988, *et seq.* The essence of due process of law is that no person shall be deprived of life, liberty, property or of any rights granted her by statute, unless the matter involved first shall have been adjudicated against him in a trial conducted according to established rules regulating judicial proceedings. Thus, in the complaint and information, proof of the fact that a crime has been committed and that the

respondents have deprived petitioner of her rights were submitted to the Court. (Fed. R. Crim. P. 54).

Finally, although the court has adopted a single view of the due process of law the effect of the Fifth and Fourteenth Amendments is not the same.

CONCLUSION

For the reasons and argument presented, petitioner, Mrs. Carolyn S. Smith, requests that her Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT DATED AND FILED AUGUST 31, 1999

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-30115
Summary Calendar

CAROLYN J. SMITH,

Plaintiff-Appellant,

versus

CHARLES H. FAUCHEUX, Doctor; STATE OF LOUISIANA MEDICAL REVIEW PANEL; ST. ANNE GENERAL HOSPITAL,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 98-CV-558-B

Before JOLLY, JONES and BENAVIDES, Circuit Judges.

PER CURIAM:*

Carolyn J. Smith appeals the district court's dismissal of her case for lack of subject matter jurisdiction. She alleges

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* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

that the district court erred by denying her "due process of law rights" and departing from the Federal Rules of Civil Procedure and criminal procedure guidelines.

The record in this case reveals that both Ms. Smith and all of the defendants named are domiciled in the state of Louisiana. As such, subject matter jurisdiction cannot be based on diversity of citizenship. *See* 28 U.S.C. § 1332; *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 829, 109 S.Ct. 2218, 2221 (1989). Ms. Smith's attempts to establish some sort of federal question in her brief are devoid of merit; essentially, her claims boil down to a simple medical malpractice case. *See* 28 U.S.C. § 1331. Because Ms. Smith has established neither diversity of citizenship nor a federal claim, the district court did not err in dismissing the case as to all defendants.

AFFIRMED.

APPENDIX B — ORDER AND REASONS AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA DATED AND FILED JANUARY 22, 1999

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION
NO. 98-558

SECTION: B(2)

MRS. CAROLYN J. SMITH

VERSUS

DR. CHARLES H. FAUCHEAUX, ET AL.

Order and Reasons

IT IS HEREBY ORDERED that defendant St. Anne General Hospital's Motion to Dismiss (Rec. Doc. No. 4) is **GRANTED.**

Pro se Plaintiff, Carolyn Smith, lives in Lafourche Parish, Louisiana. Defendants are also domiciled in Louisiana or have their principle place of business in Louisiana. Plaintiff alleges that on or about July 28, 1993 through February 21, 1994, the actions of Dr. Charles Faucheux caused damage to her uterus, placenta and child. She claims that because her ultra sound, genetic and F.I.S.H. tests were normal, the condition of her child must be due to her torn placenta.

Appendix B

Plaintiff's claims against defendants are for "civil and criminal actions of fraud, malpractice and negligence per se." Defendant St. Anne General Hospital seeks dismissal of the action and/or the striking of certain inflammatory words from the body and text of the complaint, or, alternatively, for a more definite statement of the case.

Defendant's Contentions

The Hospital brings this motion for dismissal under Fed. R. Civ. P. 12(b)(1), for lack of subject matter jurisdiction. It contends that subject matter jurisdiction can not be based on 28 U.S.C. §1332, diversity of citizenship, because plaintiff is a domiciliary of Louisiana and the Hospital is a political subdivision of Lafourche Parish, Louisiana, with its principle place of business in Lafourche Parish, Louisiana.

The Hospital also contends that subject matter jurisdiction cannot be based on 28 U.S.C. §1331 because the complaint contains no federal question cause of action. It contends that plaintiff's citations to federal statutes are merely scattershot. They assert that, at best, plaintiff's complaint alleges medical malpractice under Louisiana law. This is based on four reasons.

First, The Hospital contends that plaintiff does not have standing to bring "criminal actions" under federal law, and neither "malpractice" nor "negligence per se" is a federal crime. Second, it contends that there is no claim for "fraud" because there is only a general allegation of fraud, not a particular claim, as required by Fed. R. Civ. P. 9(b). It lists plaintiff's generalities and demonstrates her lack of

particularity. (Defendant's Motion, P. 4-5). The Hospital further contends that, even if the fraud alleged was particular, which it is not, then it is still insufficient due to the failure of plaintiff to plead with specificity as to each defendant. Allegations of fraud may be dismissed where each defendants' role is not particularly alleged. *Rhone v. Entergy North, Inc.*, 790 F. Supp. 353, 361 (D. Mass. 1991).

Third, the Hospital contends that plaintiff has failed to identify any conduct of any defendant giving rise to a claim under the Constitutional provisions cited, Article 1, section 10; Article 4; and Article 6. Lastly, plaintiff has not identified any conduct by any defendant that gives rise to a claim under 18 U.S.C. §1001, and even if she did, it is a federal criminal statute that does not create a civil cause of action for private litigants.

The Hospital further moves striking from the complaint the vague references to an alleged "criminal action" or "fraud, malpractice, and negligence per se" from the complaint because the references are immaterial, inflammatory, and lack any basis in law or fact. It asserts these references are "impertinent" or "scandalous" under Fed. R. Civ. P. 12(f). It cites *Talbot v. Robert Matthews Distributing Co.*, 961 F.2d 654, 664-665 (7th Cir. 1992) (court struck allegations that a party intentionally caused a salmonella outbreak at a dairy because it was based on rumors and devoid of facts) and *Nault's Automobile Sales, Inc. v. American Honda Motor Co., Acura Automobile Div.*, 148 F.R.D. 25 (D.N.H. 1993) (court struck allegations of discovery abuses, subornation of perjury, and perjury as without basis and scandalous).

Appendix B

Plaintiff's Contentions

Plaintiff has not responded to this motion. She previously filed a response to an order by Judge Vance (Rec. Doc. No. 3), which contained questions regarding the defendants' addresses, the location of the event(s) at issue, and the statutes under which plaintiff claims to be proceeding or under which the defendants are allegedly liable for her alleged injuries. The addresses that she lists for all parties and for the location of the events are all in Louisiana (she provides specific addresses). Plaintiff contends that her claims are based on 18 U.S.C.A. §1001 for "the crime of making false statement concerning denial of constitutional rights, of fraudulent statements to deny and deprive [her] of rights," and on Article 1, Section 10; Article 4, and Article 6 of the U.S. Constitution in compliance with 28 U.S.C.A. §1331 and for "intentionally refusing or failing to perform all duty lawfully required of them, as such officer or employer, and performed such duty in an unlawful manner."

Law & Discussion

If just one defendant is a citizen of the same state as the plaintiff, subject matter jurisdiction cannot be based on diversity of citizenship. 28 U.S.C. §1332. *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 829, 109 S.Ct. 2218, 2221 (1989). Plaintiff and defendants are all citizens of Louisiana. Therefore, this court lacks diversity jurisdiction.

Furthermore, plaintiff cannot rely on federal question jurisdiction under 28 U.S.C. §1331, despite her invocation of several Constitutional provisions and various federal

statutes. Plaintiff cites Article 1, Section 10; Article 4; and Article 6 of the United States Constitution. Article 1, Section 10 discusses sovereign powers which states are prohibited from exercising, such as entering into treaties, granting letters of marque and reprisal and coining money. U.S.C.A. Const. Art. 1, Section 10. Article 4 lays out states' reciprocal relationships with each other and with the United States. This article includes the full faith and credit clause and the privileges and immunities clause. U.S.C.A. Const. Art. 4. Article 6 covers the validation of debts, the supremacy clause, oaths of office and religious tests for federal officials. U.S.C.A. Const. Art. 6. Plaintiff's claims here could not trigger the application of any of the above noted constitutional provisions. Plaintiff also cites Title 42 U.S.C.A. §1985 et seq. as another basis for her claims. The latter statute creates a cause of action for victims of conspiracies to interfere with their civil rights by 1) preventing a government officer from performing his duties; 2) by obstructing justice, intimidating parties, witnesses or jurors; or 3) depriving persons of rights and privileges or equal protection of the law. Section 1986 of the latter Title creates a cause of action against persons who, with knowledge of a §1985 conspiracy and the power to prevent or aid in the prevention of the commission of the conspired act, neglected or refused to prevent it. Plaintiff's conspiracy claims are not supported with facts or law. Conclusory conspiracy claims must fail. *Marts v. Hines*, 68 F.3d 134, 136 (5th Cir. 1995); *Wesley v. Don Stein Buick, Inc.*, 985 F.Supp. 1288, 1299 (D.Kan. 1997).

Lastly, plaintiff cites Title 18 U.S.C. §1001. Section 1001 is a criminal statute that creates a federal crime for

concealing a material fact from or making false or fraudulent statements to any department or agency of the United States. This statute is designed to prevent deceptive practices aimed at frustrating or impeding legitimate functions of government departments or agencies of the United States. *United States v. Tobon-Builes*, 706 F.2d 1092 (11th Cir. 1983), *rehearing denied*, 716 F.2d 914. Even if the facts fit, which they do not, plaintiff has no standing to bring a suit under 18 U.S.C. §1001 because it does not provide a private right of action. *Williams v. McCausland*, 791 F. Supp 992, 1001 (S.D.N.Y. 1992). The right to pursue such an action rests with federal law enforcement officials (i.e., United States Attorney General and United States Attorneys).

IT IS FURTHER ORDERED that this action be **DISMISSED** for lack of subject matter jurisdiction as to all other defendants, Dr. Charles Faucheaux and the State of Louisiana Medical Review Panel, on the Court's own motion. Fed. R. Civ. P. 12(h)(3). Whenever a doubt arises as to the existence of subject matter jurisdiction, a court is obliged to inquire sua sponte whether such jurisdiction exists. *Marathon Oil Company v. A.G. Ruhrgas*, 145 F.3d 211, 217 (5th Cir. 1998); *J.A.R., Inc. v. M/V Lady Lucille*, 963 F.2d 96, 98 (5th Cir. 1992). Dismissal for lack of subject matter jurisdiction is only proper in the case of a frivolous or insubstantial claim, i.e. a claim which has no plausible foundation. . . ." *Bell v. Health-Mor, Inc.*, 549 F.2d 342, 344 (5th Cir. 1977). Based on the above analysis, this Court finds that plaintiff's claims have no plausible foundation according to the statutes and federal law cited by plaintiff in her complaint and answer to interrogatories (Rec. Doc. No. 5).

Appendix B

IT IS FURTHER ORDERED that Defendant's Motion to Strike Certain Terms and Motion for a More Definite Statement (Rec. Doc. No. 4) are dismissed as **MOOT** in view of the Court's ruling on the above motion to dismiss.

Accordingly, plaintiff's claims as to all defendants are dismissed.

New Orleans, Louisiana this 22nd day of January, 1999.

s/ [illegible]
UNITED STATES DISTRICT
JUDGE

Appendix B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION
NO. 98-558

SECTION: B(2)

MRS. CAROLYN SMITH

VERSUS

DR. CHARLES H. FAUCHEAUX, ET AL.

JUDGMENT

For the reasons this date separately assigned and having dismissed plaintiff's claims for lack of subject matter jurisdiction, accordingly,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants Dr. Charles H. Faucheaux, St. Anne General Hospital and State of Louisiana Medical Review Panel and against plaintiff Carolyn J. Smith, dismissing plaintiff's claims with prejudice.

New Orleans, Louisiana this 22nd day of January, 1999.

s/ [illegible]
UNITED STATES DISTRICT
JUDGE

APPENDIX C — OPINION OF THE STATE OF LOUISIANA, PATIENTS COMPENSATION FUND, MEDICAL REVIEW PANEL DATED OCTOBER 6, 1997

STATE OF LOUISIANA
PATIENTS COMPENSATION FUND
MEDICAL REVIEW PANEL

PCF file: 95-1011

THOMAS AND CAROLYN SMITH, INDIVIDUALLY AND ON BEHALF OF THEIR MINOR SON, T. J. SMITH

VERSUS

DR. CHARLES H. FAUCHEUX, AND ST. ANNE HOSPITAL & HEALTH CENTERS

OPINION

The Medical Review Panel, comprised of the three undersigned physicians in the above captioned matter, after due proceedings had, proper instructions regarding the duty of care, and after review of all the evidence presented, hereby renders the following findings:

The evidence does not support the conclusion that the defendants, Dr. Charles H. Faucheux, or St. Anne Hospital failed to comply with the applicable standard of care as charged in the complaint in their treatment of Carolyn Smith and T. J. Smith.

Appendix C

REASONS

RE: DR. CHARLES H. FAUCHEUX:

We are confident that the diagnosis is microcephaly 2° Lissencephaly and with that diagnosis we can say very confidently that there is nothing that the obstetrician can do to prevent this disorder, and thus we find that Dr. Faucheux did not cause this condition and could not diagnosis it. It is a very rare disorder that could not have been prevented by the obstetrician.

RE: ST. ANNE HOSPITAL AND HEALTH CENTER:

The hospital did not deviate from the standard of care for the same reasons as stated above.

Opinion rendered on this 6th day of October, 1997.

s/ Jack Wise
JACK WISE,
PANEL CHAIRMAN

s/ Philip N. Neal
PHILIP N. NEAL, M.D.

s/ John R. Landry
JOHN R. LANDRY, M.D.

s/ Alfred G. Robichaux
ALFRED G. ROBICHAUX, III, M.D.

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT DENYING PETITION FOR REHEARING DATED AND FILED SEPTEMBER 30, 1999

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-30115

CAROLYN J SMITH

Plaintiff – Appellant

v.

CHARLES H. FAUCHEUX, Doctor; LOUISIANA STATE OF MEDICAL REVIEW PANEL; ST ANNE GENERAL HOSPITAL

Defendants – Appellees

Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans

ON PETITION FOR REHEARING

Before JOLLY, JONES and BENAVIDES, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above case is Denied.

ENTERED FOR THE COURT:

s/ [illegible]
United States Circuit Judge